

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of: |) | |
| |) | |
| Cablevision of Raritan Valley, Inc. |) | CSR 6108-E |
| |) | |
| Cablevision of New Jersey |) | CSR 6169-E |
| |) | |
| Cablevision of Monmouth |) | CSR 6176-E |
| |) | |
| Petitions for Determination of Effective Competition | | |

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2004

Released: April 15, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Cablevision Systems Corporation, through its various subsidiaries, has filed with the Commission three separate petitions pursuant to Section 76.7 of the Commission's rules for determinations of effective competition in several New Jersey communities ("Communities").¹ Cablevision alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certifications of the local

¹ 47 C.F.R. § 76.7. The communities listed in Cablevision's Raritan Valley Petition are as follows: (1) Aberdeen (NJ0400); (2) Bound Brook (NJ0238); (3) Green Brook (NJ0234); (4) Old Bridge (NJ0398); (5) Raritan (NJ0291); South Bound Brook (NJ0235); (6) Sayreville (NJ0364); and Warren (NJ0236). The communities listed in Cablevision's Bergen Petition are as follows: (1) Closter (NJ0374); (2) Cresskill (NJ0216); (3) Old Tappan (NJ0425); (4) River Vale (NJ0420); (5) Rockleigh (NJ0585); (6) Saddle River (NJ0584); (7) Woodcliff Lake (NJ0426); (8) Bogota (NJ0201); (9) Franklin Lakes (NJ0532); (10) Garfield (NJ0245); (11) Rochelle Park (NJ0315); (12) South Hackensack (NJ0276); (13) Upper Saddle River (NJ0458); (14) Kinnelon (NJ0171); (15) Haledon (NJ0318); (16) North Caldwell (NJ0181); (17) Prospect Park (NJ0333); (18) West Paterson (0180); (19) Wood-Ridge (NJ0326); and (20) South Orange (NJ0582). The communities listed in Cablevision's Monmouth Petition are as follows: (1) Avon-by-the-Sea (NJ0277); (2) Brielle (NJ0280); (3) Colts Neck (NJ0556); (4) Englishtown (NJ0429); (5) Freehold (NJ0428); (6) Howell (NJ0531); (7) Interlaken (NJ0456); (8) Manalpan (NJ0430); (9) Manasquan (NJ0281); (10) Marlboro (NJ0557); (11) Millstone (NJ0617); (12) Neptune (NJ0283); (13) Ocean (NJ0161); (14) Sea Girt (NJ0284); (15) Spring Lake (NJ0286); (16) Upper Freehold (NJ0618); (17) Wall (NJ0288); (18) Jackson (NJ0346); (19) Washington (NJ0588); (20) Manville (NJ0290); and (21) Union Beach (NJ0401).

franchising authorities in the Communities to regulate basic cable service rates.² Cablevision claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). The Division of the Ratepayer Advocate for the State of New Jersey ("Ratepayer Advocate") filed comments in response to each of the three Petitions and Wall Township filed comments in response to Cablevision's Monmouth Petition. Cablevision filed replies to the comments submitted.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Cablevision has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ Cablevision has provided evidence of the advertising of DBS service in news media serving the Communities.⁷ We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.⁸ Cablevision has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas. Cablevision has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and EchoStar.⁹ Therefore, the first prong of the competing provider test is satisfied.

² 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ Petitions at 4 and Exhibit 1.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5.

⁹ Petitions at 2-5.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Cablevision sought to determine the competing provider penetration in its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within Communities on a franchise-specific zip code plus four basis.¹⁰ In its opposition, the Ratepayer Advocate states that Cablevision's pleading mixes data from different dates, and does not present complete counts, thus making it difficult to determine if competition exists.¹¹ The Ratepayer Advocate specifically states that Cablevision uses data from the 2000 Census to determine the number of households, but the SkyTrends data is from a survey conducted in 2002. The Ratepayer Advocate argues that the two year differential impacts the case because some of the Communities are very close to 15 percent.¹² The Ratepayer advocate asserts that if new household data were used, certain communities, such as Aberdeen, Sayreville, and Bound Brook would fall below 15 percent.¹³ In its Opposition, Wall Township asserts that the general information provided by Cablevision in its petition does not enable it to verify the accuracy of the percentages submitted by the operator.¹⁴ In reply, Cablevision asserts that the Commission's rules permit it to rely upon the most recent Census data to measure homes passed in the Communities.¹⁵ Cablevision additionally states that it has presented sufficient evidence and analyses showing that competing MVPDs serve 15 percent of the households in the Communities.

6. We find that the Ratepayer Advocate's arguments are without merit. The Commission has held that 2000 Census data is sufficiently reliable for effective competition determinations.¹⁶ The use of such data is consistent with precedent and permissible under our rules. Moreover, the Census 2000 data plus Certificate of Occupancy ("CO") and the tax records plus CO approach suggested by the Ratepayer Advocate is not demonstrably more reliable than the data submitted by Cablevision. As noted by Cablevision, COs are not necessarily a reliable indicator of an increase in the number of households in a community. First, COs do not automatically indicate that a residence is occupied. Second, a CO may actually be a re-issuance of a lost certificate. Finally, the issuance of a CO may indicate a diminution of the number of households in a franchise area -- such as when a small apartment building is demolished and replaced with a single family home. Likewise, the number of taxable residential properties in a franchise area is also unreliable because property is taxed whether or not it is occupied. To the extent that Wall Township has expressed concerns regarding the accuracy of SkyTrends' data, we believe that the information provided in response by Cablevision and SkyTrends addresses those concerns.¹⁷ As shown by Cablevision, the zip code plus four mapping and allocation process used by SkyTrends eliminates from its DBS subscriber total any residents associated with zip code plus four extensions outside of the Communities, as well as any multiple receiver data and subscribers with general delivery and non-deliverable zip code plus four extensions.¹⁸ On this basis, we believe that Cablevision has provided

¹⁰ *Id.* at 6.

¹¹ Ratepayer Advocate Opposition at 3 or 5 or 7-10.

¹² *Id.*

¹³ Ratepayer Advocate Opposition to Raritan Valley Petition at 4.

¹⁴ Wall Township Opposition to Monmouth Petition at 2.

¹⁵ Replies at 3.

¹⁶ *See, e.g., Texas Cable Partners*, 17 FCC Rcd 6373 (2002); *Falcon Cable Systems*, 17 FCC Rcd 4648 (2002).

¹⁷ Cablevision Reply at 10-11.

¹⁸ *See* Petitions at Exhibit 7.

sufficient information to verify the accuracy of the SkyTrends mapping process.

7. Cablevision asserts that it is the largest MVPD in the Communities because its subscribership exceeds the aggregate DBS subscribership for the franchise area.¹⁹ Based upon the aggregate DBS subscriber penetration level, calculated using 2000 Census household data,²⁰ we find that Cablevision has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities.²¹ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed by Cablevision Systems Corporation, Inc. **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in the above-referenced New Jersey communities **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

¹⁹ See Petitions at 5-6.

²⁰ See *id.* According to Cablevision and SkyTrends, DBS penetration ranges from 15.02 percent in Old Tappan to 28.89 percent in Saddle River. See Exhibit 7 attached to Petitions.

²¹ The precise penetration rate for each franchise area is set forth on Attachment A.

²² 47 C.F.R. § 0.283.

Attachment A

Cablevision of Raritan Valley CSR 6108-E

| <u>Franchise Area</u> | <u>Households</u> | <u>DBS Subs</u> ²³ | <u>Penetration</u> |
|-----------------------|-------------------|-------------------------------|--------------------|
| Aberdeen | 6421 | 1061 | 16.52% |
| Bound Brook | 3615 | 576 | 15.93% |
| Green Brook | 1893 | 418 | 22.08% |
| Old Bridge | 21438 | 3797 | 17.71% |
| Raritan | 2556 | 432 | 16.90% |
| S. Bound Brook | 1632 | 253 | 15.50% |
| Sayreville | 14955 | 2464 | 16.48% |
| Warren | 4629 | 885 | 19.12% |

Cablevision of New Jersey CSR 6169-E

| <u>Franchise Area</u> | <u>Households</u> | <u>DBS Subs</u> | <u>Penetration</u> |
|-----------------------|-------------------|-----------------|--------------------|
| Closter | 2789 | 447 | 16.03% |
| Cresskill | 2630 | 409 | 15.55% |
| Old Tappan | 1178 | 267 | 15.02% |
| River Vale | 3275 | 578 | 17.65% |
| Rockleigh | 74 | 17 | 22.97% |
| Saddle River | 1118 | 323 | 28.89% |
| Woodcliff Lake | 1824 | 281 | 15.41% |
| Bogota | 2874 | 448 | 15.59% |
| Franklin Lakes | 3322 | 734 | 22.10% |
| Garfield | 11250 | 1756 | 15.61% |
| Rochelle Park | 2061 | 331 | 16.06% |
| South Hackensack | 811 | 151 | 18.62% |
| Upper Saddle River | 2497 | 461 | 18.46% |
| North Caldwell | 2070 | 324 | 15.65% |
| Kinnelon | 3062 | 461 | 15.06% |
| Haledon | 2820 | 440 | 15.60% |
| Prospect Park | 1822 | 357 | 19.59% |
| West Paterson | 4397 | 738 | 16.78% |
| Wood Ridge | 3024 | 493 | 16.30% |
| South Orange Village | 5522 | 1050 | 19.01% |

²³ See Cablevision Reply at 7.

Cablevision of Monmouth CSR 6176-E

| <u>Franchise Area</u> | <u>Households</u> | <u>DBS Subs</u> | <u>Penetration</u> |
|------------------------------|--------------------------|------------------------|---------------------------|
| Avon-by-the-Sea | 1043 | 171 | 16.40% |
| Brielle | 1938 | 315 | 16.25% |
| Colts Neck | 3513 | 754 | 21.46% |
| Englishtown | 643 | 98 | 15.24% |
| Freehold | 10814 | 1867 | 17.26% |
| Howell | 16063 | 2949 | 18.36% |
| Interlaken | 386 | 58 | 15.03% |
| Manalapan | 10781 | 1949 | 18.08% |
| Manasquan | 2600 | 397 | 15.27% |
| Marlboro | 11478 | 2542 | 22.15% |
| Millstone | 2708 | 642 | 23.71% |
| Neptune | 10907 | 1729 | 15.85% |
| Ocean | 10254 | 1791 | 17.47% |
| Sea Girt | 942 | 182 | 19.32% |
| Spring Lake | 1463 | 256 | 17.50% |
| Upper Freehold | 1437 | 407 | 28.32% |
| Wall | 9437 | 1648 | 17.46% |
| Jackson | 14176 | 2419 | 17.06% |
| Washington | 4074 | 619 | 15.19% |
| Manville | 4115 | 624 | 15.16% |
| Union Beach | 2143 | 416 | 19.41% |